

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Ohio Valley Electric Corporation Kyger Creek Station  
5758 State Route 7N  
Cheshire, Ohio 45620  
ahope@ovec.com

**ATTENTION:**

Ms. Annette Hope  
Plant Manager

**Request to Provide Information Pursuant to the Clean Water Act**

The U.S. Environmental Protection Agency is requiring Ohio Valley Electric Corporation Kyger Creek Station (OVEC or you) to submit certain information about the facility at 5758 State Route 7N, Cheshire, Ohio 45620. Appendix A provides the instructions needed to answer this information request, including instructions for electronic submissions. Appendix B specifies the information that you must submit. You must send this information to us within 60 calendar days after you receive this request. If you are unable to respond in a timely fashion because of impacts related to the COVID-19 pandemic, please submit a written extension request via email to [hodaj.andi@epa.gov](mailto:hodaj.andi@epa.gov), explaining the specific impacts on your ability to respond.

We are issuing this information request under Section 308(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1318(a). Section 308(a) authorizes the Administrator of EPA to require the submission of information. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, Region 5.

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, among other things, that whenever required to carry out an objective of the Act, the Administrator of EPA shall require the owner or operator of any point source to: establish and maintain such records, make such

reports, install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and provide such other information as the Administrator may reasonably require.

OVEC owns and operates several point sources at the Cheshire, Ohio facility. We are requesting this information to determine whether these sources are complying with the CWA.

OVEC must send all required information to [hodaj.andi@epa.gov](mailto:hodaj.andi@epa.gov). If, for some reason, materials cannot be transmitted electronically, submissions can be sent to:

Water Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region 5  
Attn: Andi Hodaj, ECW-15J  
77 West Jackson Boulevard  
Chicago, Illinois 60604

OVEC must submit all required information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a).

As explained more fully in Appendix C, OVEC may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information submitted to us. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If OVEC does not assert a business confidentiality claim when submitting the information, EPA may make this

information available to the public without further notice. OVEC should be aware, however, that pursuant to Section 308(b) of the CWA, 33 U.S.C. § 1318(b), and 40 C.F.R. § 2.302(e), effluent data, standards, and limitations are not eligible for confidential treatment.

This information request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information from specific individuals or entities as part of an administrative action or investigation.

We may use any information submitted in response to this request in an administrative, civil or criminal action. Failure to comply fully with this information request may subject OVEC to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. §§ 1001 and 1341.

You should direct any questions about this information request to Andi Hodaj at 312-353-4645.

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Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division

## **Appendix A**

When providing the information requested in Appendix B, use the following instructions and definitions.

### **Instructions**

1. Provide a separate narrative response to each question and subpart of a question set forth in Appendix B.
2. Precede each answer with the number of the question to which it corresponds and, at the end of each answer, identify the person(s) who provided information used or considered in responding to that question, as well as each person consulted in the preparation of that response.
3. Indicate on each document produced, or in some other reasonable manner, the number of the question to which it corresponds.
4. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
5. Where information or documents necessary for a response are neither in your possession nor available to you, indicate in your response why the information or documents are not available or in your possession, and identify any source that either possesses or is likely to possess the documents or information.
6. If information is not known or not available to you as of the date of submission and later becomes known or available to you, you must supplement your response. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or incorrect, you must notify EPA as soon as possible.

### **Electronic Submissions**

To aid in our electronic recordkeeping efforts, we request that you provide all documents responsive to this information request in an electronic format according to paragraphs 1 through 6, below. These submissions are in lieu of hard copy.

1. Provide all responsive documents in Portable Document Format (PDF) or similar format, unless otherwise requested in specific questions. If the PDFs are scanned images, perform at least Optical Character Recognition (OCR) for “image over text” to allow the document to be searchable. Submitters providing secured PDFs should also provide unsecured versions for EPA use in repurposing text.
2. When specific questions request data in electronic spreadsheet form, provide the data and corresponding information in editable Excel or Lotus format, and not in image format. If Excel or Lotus formats are not available, then the format should allow for data to be used in calculations by a standard spreadsheet program such as Excel or Lotus.

3. Provide a table of contents for the electronic documents submitted in response to our request so that each document can be accurately identified in relation to your response to a specific question. *We recommend the use of electronic file folders organized by question number.*
4. Documents claimed as confidential business information (CBI) must be submitted in separate file folders apart from the non-confidential information. This will facilitate appropriate records management and appropriate handling and protection of the information claimed as CBI. Please follow the instructions in Appendix C for designating information as CBI.
5. Certify that all electronic submittals including attached files have been scanned for viruses and indicate what program was used.

### **Definitions**

All terms used in this Information Request have their ordinary meaning unless such terms are defined in the CWA, 33 U.S.C. § 1251 *et seq.*, or 40 C.F.R. Part 122.

1. “Act” or “CWA” means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*
2. “Day” or “days” means a calendar day unless expressly stated to be a working day. In computing any period of time under this Information Request, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business on the next working day.
3. “Discharge of a pollutant,” as defined in Section 502(12) of the CWA, means *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
4. “Facility” means the property located at 5758 State Route 7N, Cheshire, Ohio.
5. “Leachate Pond” means the flue gas desulfurization landfill contact leachate pond located along Shaver Road and approximately 0.3 miles south of Little Kyger Road at Facility’s landfill.
6. “MGD” means millions of gallons per day.
7. “Navigable waters,” as defined in Section 502(7) of the CWA, means “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
8. “NPDES Permit” and “Permit” mean the permit issued in accordance with the National Pollutant Discharge Elimination System (NPDES) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. In this Order, these terms mean NPDES Permit No. OH0005282, issued by the State of Ohio to OVEC with the effective date of October 1, 2018, and the expiration date of April 30, 2019.

9. “Outfall” means a type of “point source,” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), that serves as a discharge point from the facility. “Outfall” followed by an Arabic numeral means that Outfall assigned that number in OVEC’s NPDES permit.
10. “Point source,” as defined in Section 502(14) of the CWA, means “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
11. “Pollutant,” as defined in Section 502(6) of the CWA, means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
12. “Record” or “records” means any recording of information in tangible or intangible form. It includes, but is not limited to documents, memoranda, reports, letters, maps, graphs, charts, log books, notes, computer printouts, and computer databases.
13. “Storm water” shall mean storm water runoff, snow melt runoff, surface runoff and drainage.
14. “Wastewater” shall mean any water/liquid and all material conveyed with that water/liquid that contains process wastewater, discarded material, noncontact cooling and/or heating water, or domestic wastewater.
15. “You” or “Your” for purposes of this Information Request refers to OVEC and to any managers, officers, agents, employees, contractors, or other entities that perform work or act in any way on behalf of, or at the direction of OVEC.

## **Appendix B**

### **Information You Are Required to Submit to EPA**

Ohio Valley Electric Corporation Kyger Creek Station (OVEC or you) must submit the following information pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a).

1. The Permit to Install (PTI) approved by Ohio EPA for using water from outfall 005 or the fly ash pond for dust suppression activities.
2. Please provide the following information on dust suppression activities at the Facility (including the landfill area).
  - a. A description of dust suppression activities at the Facility including:
    - i. A description of the source of water;
    - ii. Methods used to apply the water;
    - iii. A map that shows the roads where dust suppression is performed;
    - iv. A description of how OVEC manages runoff from dust suppression spraying at the Facility; and
    - v. A description of the road type (for example: gravel, asphalt, etc).
  - b. For the first 30 days after receipt of this information request, provide:
    - i. The total daily amount of water used for dust suppression and how much of that water is from the Leachate Pond;
    - ii. Activity Logs from the employee(s) performing the dust suppression; and
    - iii. The application rate in gallons/square foot/minute.
3. A map, along with as-built drawings, of catch basins and storm drains around the Facility, including the catch basin mentioned in page 9 and photograph 26 of EPA's inspection report dated October 17, 2019.
4. Within 30 days of receipt of this information request, collect four water samples on four separate days from outfall 029 within 24 hours after spraying the roads at the landfill with water from the Leachate Pond. Samples taken should be analyzed for Total Suspended Solids (TSS), Oil and Grease, Fluoride, Selenium, Barium, Mercury, and Boron. Test procedures for the analysis of pollutants shall conform to regulation 40 CFR 136, "Test Procedures for the Analysis of Pollutants." For each sample taken record the following information:
  - a. The exact place, date, and time of sampling;
  - b. The person(s) who performed the sampling or measurements;
  - c. The date the analyses were performed on those samples;
  - d. The person(s) who performed the analyses;

- e. The analytical techniques or methods used; and
  - f. The results of all analyses and measurements, including chain of custody forms and the lab reports.
5. Part I, A, of the NPDES permit requires that the Facility sample discharge from outfalls 008 and 011 when they are discharging. Please provide the results from sampling analyses for the months of September 2019 through April 2020.
6. Provide the current status of the Plan of Action related to OVEC Outfall 0IB00005031, as required by Part I.C.3.b. in OVEC's NPDES permit.



## **Appendix C**

### **Confidential Business and Personal Privacy Information**

#### **Assertion Requirements**

You may assert a business confidentiality claim covering any parts of the information requested in the attached Appendix B, as provided in 40 C.F.R. § 2.203(b).

To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document for which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a caption or other suitable form of notice to indicate the intent to claim confidentiality. The stamped or typed caption or other suitable form of notice should employ language such as “trade secret” or “proprietary” or “company confidential” and indicate a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by EPA only to the extent permitted and by means of the procedures set forth at Section 308(a) of the CWA and 40 C.F.R. Part 2. Please clearly identify portions of otherwise non-confidential documents that you are claiming as confidential. EPA will construe the failure to furnish a confidentiality claim with your response to the information request may result in the information being made available to the public without further notice to you.

#### **Determining Whether the Information Is Entitled to Confidential Treatment**

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking that you support your confidential business information (CBI) claim. If you receive such a letter, you must respond within the number of days specified by EPA. Failure to submit your comments within that time would be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. If you receive such a letter, EPA will ask you to specify which portions of the information you consider confidential by page, paragraph and sentence. Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being CBI, EPA will ask that you answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a special event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who

is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Is the information contained in any publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to confidentiality of the information? If so, please attach a copy of the determination.
6. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
7. Is there any other information you deem relevant to EPA's determination regarding your claim of business confidentiality?

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination.

EPA may also find that the information you claim as confidential is clearly not entitled to confidential treatment and will provide you a determination letter stating the same. Examples of information clearly not entitled to confidential treatment include effluent data, as defined in 40 C.F.R. § 2.302(A)(2), and information in National Pollution Discharge Elimination System permit applications are not entitled to confidential treatment. See 40 C.F.R. § 122.7.

### **Personal Privacy Information**

Please segregate any personnel, medical and similar files from your responses and include that information on a separate sheet(s) marked as "Personal Privacy Information." Disclosure of such information to the general public may constitute an invasion of privacy.

## **CERTIFICATE OF ELECTRONIC MAILING**

I certify that I sent an Information Request pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. §1318(a), by electronic mail, Delivery Receipt Requested, to:

Annette Hope  
Plant Manager  
Ohio Valley Electric Corporation Kyger Creek Station  
5758 State Route 7N  
Cheshire, Ohio 45620  
ahope@ovec.com

On the \_\_\_\_\_

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Andi Hodaj  
Environmental Engineer  
Water Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 5